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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 302 of the  
Telecommunications Act of 1996

Open Video Systems

CS Docket No. 96-46

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To: the Commission

**REPLY TO OPPOSITION TO PETITION FOR  
RECONSIDERATION AND CLARIFICATION**

Pursuant to Public Notice dated September 23, 1996 (Report No. 2155),  
*published at* 61 Fed. Reg. 50487 (Sept. 26, 1996), and Section 1.4 of the Commission's Rules,  
the Cable Television Association of Georgia ("CTAG") hereby replies to the Opposition of  
BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Interactive Media  
Services, Inc. (collectively "BellSouth") to CTAG's Petition for Reconsideration and  
Clarification in the above-captioned proceeding.

## **INTRODUCTION AND SUMMARY**

In 1994, BellSouth filed its first and only video dialtone application, pursuant to Section 214 of the Communications Act, 47 U.S.C. § 214, and Part 63 of the Commission's Rules. At that time, CTAG petitioned to deny BellSouth's application because BellSouth failed to satisfy the requirements of Section 214, Part 63 of the Rules, as well as the Commission's various video dialtone orders. CTAG also argued at that time, as it had previously, that video dialtone as implemented had serious shortcomings, most apparent in the lack of cost allocation rules or procedures that would apply when local exchange carriers ("LECs") establish and operate facilities for the provision of video and voice services jointly. Although the Commission ultimately granted BellSouth's 214 application, it was conditioned on certain cost and accounting requirements, and was subject, as it must be, to future cost allocation rules that the Commission expected to implement.

Congress, in the Telecommunications Act of 1996 ("1996 Act"), eliminated video dialtone, but did not require that all existing video dialtone authorizations be revoked. This created a regulatory void because the Commission had granted a few LECs, such as BellSouth, authority to construct and operate video dialtone systems, but Congress eliminated all of the video dialtone rules and procedures, and decreed that Section 214 would not apply any longer to the construction and operation of those video dialtone systems. At the request of the National Cable Television Association, the Commission released an Order, the subject of CTAG's Petition herein, requiring all video dialtone operators to transition to one of the

four regulatory options that would be permitted under the 1996 Act.<sup>1</sup> While CTAG does not dispute that existing video dialtone operators must be afforded the opportunity for an orderly transition to a new permitted video option, CTAG notes that many critical questions were left unanswered in the Commission's *Transition Order*. CTAG, therefore, filed its Petition for Reconsideration and Clarification so the Commission could clarify the critical issues left unaddressed in the *Transition Order*.

BellSouth's opposition does not address any of the issues underlying CTAG's Petition. Rather, BellSouth takes the opportunity to launch a rhetorical attack on CTAG and the cable industry generally. The tone and substance of BellSouth's opposition, however, only reinforce the need for the Commission to clarify how costs are to be treated when existing video dialtone systems transition to new regulatory constructs.

BellSouth's theme is essentially that CTAG's Petition is just another attempt to delay BellSouth's entry into the video market. The effort to delay competition is more rightfully seen as that of BellSouth. BellSouth has actively opposed rules that would ease the way for cable operators and others to enter the telecommunications markets, both at local levels and before the FCC. Moreover, the history of BellSouth and other LECs' abuse of

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<sup>1</sup> These include: Title II common carrier systems (channel service), Title III broadcast systems (MMDS and DBS), Title VI cable systems, or Title VI Open Video Systems. *Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, First Order on Reconsideration, FCC 96-312 (released July 23, 1996) ("*Transition Order*"); 47 U.S.C. § 571. *See also* Section 302(b)(2) of the 1996 Act (termination of video-dialtone regulations)(not codified).

their control over essential facilities to hinder competition is legion. Finally, BellSouth has actively sought to overturn the Commission's interconnection rules. While BellSouth and the other LECs posit that their efforts are to insure that the rules imposed on new entrants properly consider existing networks and the public interest, CTAG only seeks the same here: new entrants to video, such as BellSouth, cannot be given the opportunity to misallocate costs or they will cross-subsidize their entry into video. The Commission should disregard BellSouth's opposition and proceed to determine the merits of CTAG's petition.

**I. THE COMMISSION SHOULD UNDERTAKE AN INVESTIGATION AND ACCOUNTING OF ALL EXISTING VIDEO DIALTONE SYSTEMS PRIOR TO CONVERSION**

As CTAG demonstrated in its Petition, the most pressing issue arising from the transition of video dialtone systems to cable or OVS systems is the allocation of the costs incurred in constructing those systems. When the Commission granted its video dialtone authorizations, it committed to tracking the costs of those systems through the tariff process.<sup>2</sup> Yet, only Bell Atlantic has filed a video dialtone tariff, and that tariff's investigation was never completed. In the mean time, the Commission has recognized that its existing rules are incapable of tracking costs incurred by LECs in constructing and operating video systems.<sup>3</sup> Accordingly, existing video dialtone systems will have been constructed and operated without

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<sup>2</sup> See, e.g., *New Jersey Bell Tel. Co.*, Order and Authorization, 9 FCC Rcd. 3677 (1994).

<sup>3</sup> *Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services*, Notice of Proposed Rulemaking, CC Docket No. 96-112, ¶ 2 (released May 10, 1996).

any cost allocation rules to assure that the cost of those networks was not subsidized by monopoly telephone ratepayers. The Commission must undertake an investigation and accounting of all LECs that have constructed video networks under video dialtone authorizations. This would allow the Commission to track the costs incurred from the time of the authorization until the Commission adopts final LEC video cost allocation rules, and thus assure that local telephone ratepayers do not subsidize the LECs' entry into the video marketplace.

BellSouth's response to CTAG's Petition further demonstrates the need for Commission inquiry into the LECs' treatment of costs. For example, in response to CTAG's introduction of a BellSouth marketing document that offers cable subscribers a discount on telephony services and equipment, BellSouth baldly asserts that "this element was funded entirely by BellSouth Interactive Media Services, Inc., and was not charged to telephone company accounts."<sup>4</sup> BellSouth's only support for this statement is the declaration of the *Vice President for Marketing* of BellSouth Interactive Media, which contains the identical statement.<sup>5</sup> This is typical of LECs. BellSouth is saying to the Commission "trust us." Yet, its history, like the other LECs', demonstrates that it cannot be trusted. Until the Commission adopts its specific rules to address such allocations, BellSouth and other LECs cannot be trusted to properly account for millions of dollars in investment – especially as the

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<sup>4</sup> Opposition at 9.

<sup>5</sup> It is curious that BellSouth offers the testimony of the Vice President-Marketing on a significant corporate accounting issue.

misallocation of costs will so greatly benefit the LECs in gaining an unfair advantage when entering the video markets.

BellSouth's response regarding the other document introduced by CTAG is similarly unconvincing. In response to the document introduced by CTAG wherein BellSouth linked discounts on telephony services to subscription to BellSouth's cable service (CTAG Exhibit 9), BellSouth attacks CTAG for even having the document, which BellSouth asserts was merely a hypothetical offer used in focus group testing.<sup>6</sup> CTAG was given Exhibit 9 by the cable operator in DeKalb/Chamblee, Scripps Howard. Scripps received the document from one of its subscribers.<sup>7</sup> While BellSouth may have only used the document for market testing, it clearly did not take great pains to control its distribution. Indeed, BellSouth admits that focus group participants were only "asked" to return the document — not required.<sup>8</sup> While CTAG has no direct evidence, clearly, BellSouth's "hypothetical" offer was allowed to make its way into the public, thus creating a word-of-mouth marketing effect that can be just as effective as direct offers to subscribers.<sup>9</sup>

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<sup>6</sup> Opposition at 7.

<sup>7</sup> Declaration of Lin Atkinson.

<sup>8</sup> Opposition at 7.

<sup>9</sup> Clearly the offer raises substantial questions regarding potential cross-subsidization. The Commission's present rules cannot track the interplay of costs when LECs bundle and discount cable and telephony services. BellSouth must have been "hypothetically" exploring whether this type of cross-subsidy would work from a marketing perspective.

## II. THE COMMISSION MUST RESOLVE THE STATUS OF VIDEO DIALTONE AUTHORIZATIONS

In its Petition, CTAG pointed out that while the 1996 Act did away with the requirement that LECs obtain Section 214 authorization before *constructing* video systems, it did not repeal the existing Section 214 authorizations, nor did it state that LECs were exempt from Section 214 when withdrawing service presently provided under a Section 214 authorization.<sup>10</sup> Technically, therefore, LECs, such as BellSouth, that have constructed and are operating their systems pursuant to a Section 214 authorization must obtain specific authorization prior to discontinuing service.<sup>11</sup>

Contrary to BellSouth's assertion, CTAG does not seek to re-enact Section 214 requirements. But the Commission used its video dialtone 214 authorizations to impose conditions designed to allow oversight of their operations and their costs. As CTAG demonstrated in its Petition, considerable damage will be done if the Commission simply ignores the requirements of its Section 214 Orders, and allows LECs to convert regulated systems into unregulated systems unmonitored. Accordingly, it is imperative that the

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<sup>10</sup> 47 U.S.C. § 571(c); 1996 Act Sec. 653(b).

<sup>11</sup> Contrary to BellSouth's assertion, it had begun operation of its video dialtone trial and had offered video dialtone service. Video dialtone service was a common carrier service that BellSouth would sell *to programmers*, and the programmers would then sell their services to subscribers. By enrolling programmers and accepting their deposits for channel capacity, BellSouth had offered video dialtone service to its intended customers, and had begun its trial. Accordingly, BellSouth was obligated to file the six month reports required "during the trial." *BellSouth Order*, ¶ 52; *see also* Opposition at 4, 5-6.

Commission initiate an investigation into the allocation of the costs of video dialtone systems as they are transitioned to other models.

BellSouth's attempt to avoid accounting and reporting on its system is a perfect example of the need for Commission oversight. In its Opposition, BellSouth admits that it has not filed, and does not plan to file the reports required by the *BellSouth Order* for the fourth quarter of 1995 and the first quarter of 1996.<sup>12</sup> BellSouth boldly asserts that because the 1996 Act eliminated the Commission's video dialtone rules, generally, it was freed from the requirements of its 214 authorization.<sup>13</sup> As CTAG demonstrated in its Petition, however, BellSouth is wrong. The 1996 Act explicitly stated that the repeal of the Commission's video dialtone rules did not constitute repeal of the pre-Act Section 214 authorizations.<sup>14</sup> BellSouth's Section 214 authorization was and is in full force, and because BellSouth could only continue to operate its system under *some* regulatory authorization, it assumed the benefits as well as the burdens of operating its system under a specific video dialtone authorization that was not revoked by the Commission. Accordingly, BellSouth must abide by its express terms.

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<sup>12</sup> Opposition at 3.

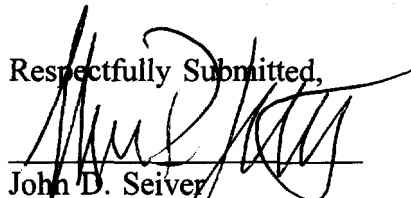
<sup>13</sup> Opposition at 3-4.

<sup>14</sup> 1996 Act sec. 653(b).

## CONCLUSION

Based on the foregoing, the Commission should grant CTAG's Petition, and initiate investigations into the cost allocation of all video dialtone systems as they are transitioned to other video models.

Respectfully Submitted,



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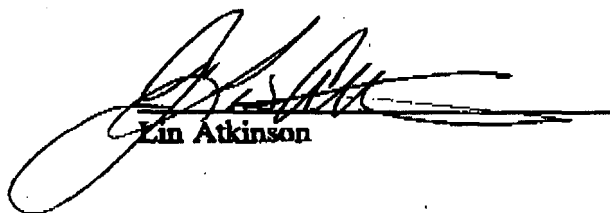
CS Docket No. 96-46

**DECLARATION OF LIN ATKINSON**

I, Lin Atkinson, declare the following:

1. I am General Manager of TeleScripps Cable Company, d/b/a Scripps Howard Cable TV Company ("Scripps").
2. Scripps was given a document titled "The BellSouth americast Loyalty Commitment" by one of Scripps' subscribers.
3. Scripps forwarded a copy of that document to the Cable Television Association of Georgia.

I declare under penalty of perjury that the foregoing is true and correct.

  
Lin Atkinson

Executed October 17, 1996

## **CERTIFICATE OF SERVICE**

I, Thomas Scott Thompson, do hereby certify that copies of the foregoing Reply to Opposition to Petition for Reconsideration and Clarification were sent via first class mail, postage paid, to the following on this 21st day of October, 1996.

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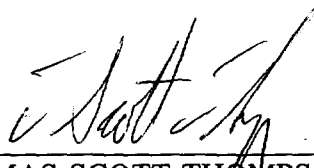
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